

Technology-driven industries like the telecommunications industry have not been spared from the financial jitters.

This time of economic and regulatory turmoil could hardly be less appropriate for launching a costly, burdensome and complex process to determine economic conditions which have even experts in finance and economics bewildered. The Commission is looking at the incentives for investment in the nationwide public network to deploy the nationwide advanced broadband capabilities Congress has endorsed in §706 and §254. Is the Commission prepared to explain to Congress why it is simultaneously embarking on a costly proceeding sure to stifle rural ILECs' investment incentives if it further dims the prospects for a fair return on risky investment on rural participation in the nation's future as an information rich economic force? The Commission should reject AT&T's rate of return prescription proposal and use its resources to finish the huge implementation tasks and infrastructure encouragement duties Congress thrust upon it in the 1996 Act.

VI. THE COMMISSION SHOULD EXPLORE CONSTRUCTIVE SUGGESTIONS FOR COORDINATED ACCESS AND UNIVERSAL SERVICE REFORMS THAT ENSURE RURAL AND URBAN COMPARABILITY AND GEOGRAPHIC RATE AVERAGING

A. Continuing Usage-Based Recovery of the Residual CCL at the Reduced Level Interim Capped SLCs and PICCs Will Properly Balance Universal Service and Efficiency Interests

AT&T's proposals attach first priority to eliminating all usage-based common line recovery. However the record clearly establishes that the immediate increase to the SLC ceilings and the higher PICC ceilings that would be necessary would put rural areas at a disadvantage and conflict with the statutory standard of reasonably comparable rates and services for rural and urban subscribers. GVNW's proposal (p. 5) to bulk bill the residual

to the IXC's may also be worth considering, if the IXC's prefer a non-usage based method. There again, the IXC's could not lawfully deaverage the charges they pass through to their end users to recover bulk billed common line costs by reason of the requirements of §254(g) for interexchange charge averaging.⁶⁸

1. Usage-based Recovery of Rate of Return LECs' Above-Average Common Line Costs from Interexchange Carriers Is Justified by Valid Universal Service Concerns about High SLC and PICC Caps

Unless the Commission can place the rural common line cost differential in a universal service mechanism, the better course is to continue the usage-based CCL charge. The reduced level made possible by the rate of return LECs' use of flat-rated SLCs and PICCs up to the comparable caps will be a gain in efficiency, and universal service needs are a sound reason not to make further prescriptive changes during the transition to competition and deregulated, market-driven charges.⁶⁹

2. The Commission Should Not Increase the Residual Usage-Based CCL Rate By Adding New Costs

USTA (p. 17) agrees with the Associations that the Commission should not increase the CCL by transferring the line side port costs. As MCI recognizes (p.17), unlike the price cap access regime, the higher costs of rate of return LECs and capped SLCs and PICCs will prevent transfers of costs from the switching category to the common line revenue requirement from transitioning the entire augmented common line costs to flat-rated recovery. As reducing usage based recovery of non-traffic sensitive

⁶⁸ The IXC's' obligation not to deaverage is buttressed by the §254(b)(3) reasonable comparability requirement, which explicitly extends to interexchange rates and services.

⁶⁹ See, Southwestern Bell at 53.

costs is the reason for the Commission's proposal to shift those costs in with the non-traffic sensitive common line costs. MCI correctly reasons (pp. 17-18), the whole exercise will accomplish nothing but administrative burdens and study costs for rate of return LECs and a shift from one usage based charge to another.⁷⁰ USTA⁷¹ and the Western Alliance⁷² have also explained that, if shifts from the switching category nevertheless occur, corrective action will be essential to preserve the interim rural LEC support the Chairman has promised.⁷³

The Commission should also refrain from transferring the residual TIC charge from the usage sensitive transport charges to the residual usage-based CCL charge. As USTA points out,⁷⁴ the charge identifies the high cost of providing transport services in less densely populated areas and the change would not phase out the TIC, as is the case under the price cap access regime, since the rate of return ILECs do not have an annual productivity sets off that could be used to retire the TIC charge.⁷⁵ TDS Telecom has also explained (p. 20) that a shift would complicate the administration of the NECA pools, since membership in the traffic sensitive and common line pools is not identical.

⁷⁰ MCI at 17-18.

⁷¹ USTA at 17, n.43.

⁷² Western Alliance at 18.

⁷³ FCC Chairman William Kennard speech to OPASTCO, Jan. 12, 1998.

⁷⁴ USTA at 20-21.

⁷⁵ See also, AT&T at 6.

B. AT&T's Proposal to Recover Rate of Return LECs' Above Average Traffic Sensitive Costs Via a Non-Discriminatory and Competitively Neutral Universal Service Mechanism Merits Serious Attention

AT&T also suggests⁷⁶ capping rate of return carriers' traffic sensitive rates⁷⁷ at price cap LECs' nationwide average traffic sensitive rates. Under this plan, ILECs would then recover the shortfall from universal service support collected pursuant to §254(d).⁷⁸ Shorn of the misguided rate of return represcription scheme, the proposal is worthy of consideration as a way to alleviate the implicit subsidies and uneven burdens of nationwide rate averaging on different IXC's. The proposal would, of course, have to be considered in a universal service proceeding, using the mandatory §254/410(c) joint board process.

The AT&T CCL "rate pegging" and universal service proposal would comply with several of the §254 requirements and standards. First, it would comply with the requirement of §254(d) for all carriers that provide interstate to contribute on an equitable and non-discriminatory basis to federal universal service support. Currently, only IXC's and their customers bear the universal service burden of providing averaged long distance rates at what AT&T identifies (p. 5) as a rate of return access charge disparity of 2.5 to 3 times over the price cap average rate. AT&T bears the lion's share of this support because it is the interstate carrier of last resort and serves high cost routes that other IXC's have

⁷⁶ See, AT&T at 4-7.

⁷⁷ AT&T seems to define traffic sensitive rates to include common line costs recovered by usage-sensitive charges and, presumably, traditional traffic-sensitive charges.

⁷⁸ We explain in the next section why the Commission should reject AT&T's proposal first to reduce rate levels by reducing the interstate rate of return and treat only the new costs as "legitimate."

avoided. In addition, the proposal would increase the incentive for other IXC's to compete to serve the high cost rural areas, advancing the Act's pro-competitive agenda.⁷⁹

Using a federal universal service mechanism would be manifestly appropriate, since the geographic rate averaging requirement is imposed as a component of the Act's universal service provisions. The Commission could model a support mechanism on the existing Long Term Support pattern, as Home Telephone Company suggests.⁸⁰ The same mechanism would also be available to support above-average costs for providing mandatory interstate service to an unserved area pursuant to §214(e)(3), should the Commission need to invoke that authority in the future.

C. A Separate Mechanism to Facilitate Mandatory Geographic Rate Averaging Must Not Be Used as a Precedent to Justify Unlawful Diversion of Interstate High Cost Support from Affordable and Comparable Local Rates

If it adopts AT&T's universal service proposal, the Commission should provide for a separate USAC-administered fund or account for any such traffic sensitive support. The support would be generated to meet the identified shortfall and collected by means of universal service contributions. Existing high cost support mechanisms and contributions should in no event be used to fund this new traffic sensitive short fall or, as explained below, to reduce access charges where there is no double recovery. The Commission should be careful to match the support and the shortfall precisely. It must not create the confusion and uncertainty it has created by its blanket instruction for price cap LECs to

⁷⁹ AT&T at 9. (rate averaging requirement with access charge and disparities discourages rural IX competitors.)

⁸⁰ Home Telephone Company at 6.

deduct universal service support payments from their interstate access revenue requirements. No one can disagree that an ILEC should not recover the same costs twice, once through the new federal universal service program and again in its access charges. However, the Commission must also scrupulously avoid deducting new universal service support from access charges (a) where there is no double recovery in the access charges; or (b) when the collective effect of the access charge and separations rules transfers what has been interstate high cost support into a cost to be recovered within each state. The Eighth Circuit's rejection of the Texas Commission's claim on unlawful jurisdictional cost shifts as premature did not condone a requirement that results in an intrastate revenue shortfall on the merits. Indeed, the Court expressly relied on the Commission's representation that its rule merely sought to prevent costs recovered from the new federal universal service fund from being recovered again from interstate access charges.⁸¹ The Commission needs to develop a more rigorous analysis to offset only interstate costs that are still included in interstate access charge revenue requirements and are also collected from the interstate portion of the new 25% federal/75% state (or other revised ratio) universal service fund that has replaced the previous 100% federal support previously recovered via interstate access charges. That change in federal responsibility is equivalent to a jurisdictional shift of the costs that

⁸¹ Southwestern Bell at 64-65.

VII. CONCLUSION

The Associations request that the Commission proceed in accordance with these comments.

Respectfully submitted

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CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Reply Comments of the National Telephone Cooperative Association in CC Docket No. 98-77, FCC 98-101 was served on this 17th day of September 1998, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

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